

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS STAFFA and U.S. POSTAL SERVICE,
POST OFFICE, Flushing, NY

*Docket No. 00-778; Submitted on the Record;
Issued October 18, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs has met its burden of proof to justify the termination of appellant's compensation benefits.

On April 3, 1975 appellant, then a 38-year-old clerk, filed a claim asserting that he injured his back throwing sacks of mail into hampers.¹ The Office accepted his claim for a sprain of the right chest and back. After receiving reports on appellant's psychiatric condition, the Office referred the case to an Office medical adviser for an opinion on whether the accepted employment injury exacerbated or aggravated appellant's preexisting psychiatric condition. On August 2, 1975 the Office medical adviser reported in the affirmative. The Office expanded its acceptance to include "aggravation of preexisting psychiatric condition." Appellant received compensation for temporary total disability on the periodic rolls.

Dr. John R. Rushton, III, appellant's Board-certified psychiatrist, continued to support injury-related disability. On July 29, 1983 he advised the Office that appellant's illness was chronic and "relentless in its pursuit and destruction of him." He reported that appellant's illness was definitely part of his injury of April 2, 1975 and was causally related. On April 24, 1985 he reported that appellant's current condition was causally related to the accepted employment injury of April 2, 1975 and that his condition was permanently aggravated: "He has never recovered and never will recover." On June 20, 1986 Dr. Rushton reported that appellant currently could not work and never would be able to work because of his accident-related illness of April 2, 1975.

On October 6, 1993 the Office requested a current medical report from appellant's physician. On November 11, 1993 Dr. Frederick E. Fried, a Board-certified psychiatrist, replied that appellant had manic depressive illness, bipolar disorder, mixed and was not capable of

¹ On May 10, 1975 he filed a claim for emotional strain due to pressures brought on by long hours, a Mr. Glover and the weigh station.

holding gainful employment. On November 4, 1994 the Office asked Dr. Fried whether, based on his session with appellant, the accepted aggravation of his psychiatric condition persisted. On November 8, 1994 Dr. Fried reported:

“Based on my sessions with [appellant], it was clear to me that he did suffer from an ongoing bipolar disorder. Since [he] has been away from the site of injury for a number of years, I can understand that you might question whether or not his manic depressive illness at this point in time can be attributed to the injury of record. While [appellant] may have experienced a temporary aggravation of psychiatric condition in 1975, it is doubtful at this point in time that one could attribute his current bipolar disorder to the entry [sic] of record. [Appellant], however, is in need of psychiatric care and has continued to be symptomatic.... I do not believe that [his] bipolar condition will cease. I do feel, however, that there is no indication that his previous work status is aggravating his condition at this time.”

In a decision dated April 3, 1995, the Office terminated appellant’s compensation benefits effective April 30, 1995. The Office found that the weight of the medical evidence on the psychiatric issue rested with Dr. Fried, who found no connection between appellant’s psychiatric condition and his employment exposure nearly 20 years earlier.²

On October 3, 1995 Dr. Rushton again reported that appellant’s current disturbed and impaired mental condition was causally related to the accepted employment injury of April 2, 1975 and that this condition was permanently aggravated.

In a decision dated January 30, 1996, an Office hearing representative found that Dr. Rushton’s October 3, 1995 report created a conflict in medical opinion with Dr. Fried, necessitating referral to a referee medical specialist under 5 U.S.C. § 8123(a). The hearing representative explained that the conflict existed because Dr. Rushton had specifically mentioned the April 2, 1975 incident and because Dr. Fried’s report was not particularly well rationalized.

On remand the Office referred the case, together with the case record and a statement of accepted facts, to Dr. Stanley Gottlieb, a Board-certified psychiatrist, to resolve the conflict. In a report dated November 4, 1996, Dr. Gottlieb related appellant’s history and provided a synopsis of his medical records. He diagnosed appellant with Bipolar I Disorder (Manic-Depressive Illness) and stated: “[Appellant] had an emotional disorder prior to his work[-]related injury of a sprain to his right chest and back. I do not feel there is any psychiatric disorder currently present that is related to the work[-]related injury of April 2, 1975. It is my opinion that [appellant] is permanently disabled due to his emotional disorder and alcohol abuse and is unable to work.”

In a decision dated March 24, 1997, the Office denied compensation benefits on the grounds that the weight of the medical opinion evidence rested with Dr. Gottlieb, the referral medical specialist.

² The issue in this case centers on the accepted psychiatric condition. Appellant makes no contention that he continues to suffer from the accepted sprain of the right chest and back.

In a decision dated January 9, 1998, a second Office hearing representative set aside the Office's March 24, 1997 decision. The hearing representative found that no conflict existed under 5 U.S.C. § 8123(a) because both Dr. Fried and Dr. Rushton were appellant's treating physicians. Dr. Gottlieb, therefore, acted as a second-opinion examiner, but because he failed to provide sufficient rationale to support his opinion, the hearing representative remanded the case for a supplemental report clearly explaining how he arrived at his opinion and when the work-related psychiatric condition resolved. On the issue of reinstatement of benefits, the hearing representative found that because the Office had initially met its burden of proof and because it was the subsequent submission of evidence that compelled further development, appellant had the burden of proof to establish further entitlement to benefits.

On remand, the Office asked Dr. Gottlieb to support his opinion with medical rationale. In a supplemental report dated March 23, 1998, he explained that the medical record showed that appellant had a mental illness that existed prior to his work-related injury: "From the information I gained by reading these letters which are part of [appellant's] medical record and speaking to [appellant] I came to the conclusion that [he] has a long-standing emotional illness that predates his work[-]related injury of April 2, 1975."

The Office again requested a supplemental report from Dr. Gottlieb. The Office explained that it had accepted an injury-related aggravation of appellant's preexisting psychiatric condition and that it was accepted that appellant was diagnosed as manic-depressive, manic and paranoid schizophrenic. On May 11, 1998 Dr. Gottlieb reported as follows:

"It is my opinion that [appellant] never had a work[-]related psychiatric condition. He had a preexisting psychiatric problem. Any exacerbation of his psychiatric problem that was a result of his back injury resolved when [appellant] completed treatment for the back injury.

"I feel that [appellant's] current emotional condition is related to an emotional disorder that existed prior to his back injury. I arrived at this opinion because there are reports in the file that I previously noted, which indicate his psychiatric condition existed prior to his back injury."

In a decision dated May 14, 1998, the Office denied compensation benefits on the grounds that the weight of the medical evidence rested with Dr. Gottlieb. The Office also took into consideration several intervening incidents, unrelated to his federal employment, that had aggravated appellant's psychiatric condition.

In a decision dated March 5, 1999, a third Office hearing representative affirmed the denial of compensation benefits. The hearing representative found that Dr. Gottlieb's thorough, well-reasoned report based on a complete and accurate history of injury represented the weight of the medical evidence. She noted that Dr. Gottlieb had discussed how he arrived at his conclusion that appellant's condition was no longer related to the initial traumatic injury resulting in a back and chest injury.

On March 26, 1999 Dr. Rushton reported that there was no doubt in his mind that appellant's long-term disabling manic-depressive disorder, aggravated and caused by the stress

of his employment in 1975, continued to be ever present and prevented him from sustaining any effort, mentally or physically, gainful or not gainful. He stated that appellant “continues to be totally and permanently disabled by his chronic mental illness, a direct result of the aggravation of his preexisting mental illness.”

In a decision dated September 9, 1999, the Office denied modification of its prior decision. The Office found that Dr. Rushton’s report was of diminished probative value, as it provided no clinical findings or probative evidence that appellant continued to exhibit an aggravation of his preexisting condition.

The Board finds that the Office has not met its burden of proof to justify the termination of appellant’s compensation benefits.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.³ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁴

In this case, the Office accepted that appellant’s April 2, 1975 employment injury caused an aggravation of his preexisting psychiatric condition. The Office, therefore, has the burden of proof to justify any termination of compensation benefits for the accepted aggravation.

The Office terminated appellant’s compensation effective April 30, 1995 on the grounds that the weight of the medical evidence rested with Dr. Fried, a treating psychiatrist. In his January 30, 1996 decision, however, the Office hearing representative found that Dr. Fried’s opinion was not particularly well rationalized. The Board agrees. Dr. Fried reported that appellant suffered from an ongoing bipolar disorder, continued to be symptomatic and was in need of psychiatric care. He felt there was no indication that appellant’s previous work status was currently aggravating this ongoing condition, but he offered no clear psychiatric reasoning to support this. Dr. Fried noted simply that appellant had been away from the site of the injury for a number of years, that appellant might have suffered a temporary aggravation in 1975 but that it was doubtful one could attribute his current bipolar disorder to the accepted employment injury. To justify the termination of appellant’s compensation benefits for the accepted aggravation, the psychiatric evidence must establish more than a lapse of time. It must explain, using sound psychiatric reasoning, that the accepted aggravation of appellant’s preexisting psychiatric condition has resolved and that appellant’s ongoing psychiatric disability bears no relationship to the employment injury that occurred on April 2, 1975. Dr. Fried made no attempt to distinguish appellant’s ongoing bipolar disorder from the accepted aggravation of his preexisting psychiatric condition.

³ *Harold S. McGough*, 36 ECAB 332 (1984).

⁴ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

Because Dr. Fried's opinion is not well rationalized, it is of diminished probative value and is insufficient to justify the termination of appellant's compensation benefits.⁵

The Office subsequently determined that the weight of the medical evidence rested with Dr. Gottlieb, the Office referral psychiatrist. Noting that appellant had a preexisting emotional disorder, Dr. Gottlieb reported that appellant had no current psychiatric disorder related to the accepted employment injury. Asked to provide medical rationale, Dr. Gottlieb explained that appellant had a longstanding emotional illness that predated his April 2, 1975 employment injury. When the Office requested another supplemental report, Dr. Gottlieb opined, contrary to the accepted facts in this case, that appellant never had a work-related psychiatric condition. Notwithstanding this, Dr. Gottlieb suggested that any exacerbation resulting from the back injury resolved when appellant completed treatment for the back injury.

Dr. Gottlieb's opinion is of little probative value. His suggestion that any exacerbation resolved when appellant completed treatment for his back injury is speculative. He made no reference to the medical record to substantiate this view and he made clear that he did not accept in the first instance that appellant ever had a work-related psychiatric condition. Further, Dr. Gottlieb continued to focus on the fact that appellant's psychiatric condition was preexisting: "I feel that [appellant's] current emotional condition is related to an emotional disorder that existed prior to his back injury. I arrived at this opinion because there are reports in the file, that I previously noted, which indicate his psychiatric condition existed prior to his back injury." Dr. Gottlieb did not recognize that when a factor of employment aggravates, accelerates or otherwise combines with a preexisting, nonoccupational pathology, the aggravation of the preexisting pathology is as work-related and as compensable as an original or new injury.⁶ The mere fact that appellant had a preexisting psychiatric condition is no proof that an employment-related aggravation of that condition has resolved.

Because the Office has failed to obtain a well-reasoned psychiatric opinion showing that the accepted aggravation of appellant's preexisting psychiatric condition has resolved, it has not met its burden of proof to justify the termination of appellant's compensation benefits. The Board will reverse the Office's September 9 and March 5, 1999 decisions denying compensation.

⁵ See *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

⁶ E.g., *Charles A. Duffy*, 6 ECAB 470 (1954).

The September 9 and March 5, 1999 decisions of the Office of Workers' Compensation Programs are reversed.

Dated, Washington, DC
October 18, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member